

DOCUMENT RESUME

ED 426 316

CG 028 989

AUTHOR Gottlieb, Michael C.
TITLE Procedures in Couple and Family Therapy Documentation: Legal and Risk Management Issues.
PUB DATE 1998-08-00
NOTE 9p.; Paper presented at the Annual Convention of the American Psychological Association (106th, San Francisco, CA, August 14-18, 1998).
PUB TYPE Opinion Papers (120) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Case Records; *Confidentiality; Counselor Role; Ethics; *Family Counseling; Family Problems; Group Therapy; *Legal Responsibility; *Risk Management
IDENTIFIERS *Family Therapy

ABSTRACT

The ethical problems of the therapist who sees couples or families, who are in conflict and who may wind up in legal battles later, are reviewed. Special problems of confidentiality and the therapist's obligations to each and all are discussed. The background of the development of concepts of confidentiality is discussed and applied to the situation of multiple patients. If more than two persons are present, confidentiality cannot be said to exist in a legal sense. Should therapists stop treating couples and families? The paper asserts that systematically based therapies have a unique ability to address relational problems and, in order to do that, must see clients in interaction. Other options, such as seeing only individuals or keeping separate records for individuals are considered; but the loss of important interactional data could be said to create other ethical dilemmas. Guidelines for record keeping are suggested and examples of ways of dealing with legal situations are reported. The therapist's goal is to do what is legally, ethically, and clinically indicated. (EMK)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED 426 316

Procedures in Couple & Family Therapy Documentation:

Legal and Risk Management Issues

Michael C. Gottlieb, Ph.D., F.A.F.P.

Independent Practice

Dallas Texas

BEST COPY AVAILABLE

In T. Patterson (Chair), The Complete Guide to Documentation in Couple and Family Therapy, Presented at the Annual Meeting of the American Psychological Association, San Francisco, CA

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
- Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

M. GOTTLIB

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

028989



Procedures in Couple & Family Therapy Documentation:

Legal and Risk Management Issues

Michael C. Gottlieb, Ph.D., F.A.F.P.

Our record keeping guidelines have been largely based on a medical model where there is only one patient. Until the 1950's such rules were not a problem and record keeping was a fairly straight forward and clear cut matter. Confidentiality was maintained and information was released, only when the patient authorized the practitioner to do so. All of this changed in the 1950s when the marital and family therapy movement began, and practitioners saw more than one patient at a time. These forms of treatment, now so deeply ingrained within our training and practice, present a number of unique ethical problems, which I and others have addressed. One of these is record keeping. Unfortunately, many psychologists have little training in the often complex documentation process required to manage records of multiple patients in an ethically appropriate manner that also minimizes legal exposure. Today, in the brief time that I have, I will try to cover some of the basics.

When treating multiple patients, the practitioner's obligation to all is typically equal, except under certain circumstances such as child abuse. That is, assuming it has been so established at the outset, each adult, and in some states older teenagers, is a patient and has the same rights as the others. Differences exist with children which I will touch on later.

Typically patients have a statutory privilege regarding confidentiality, and must sign a waiver in order for a practitioner to release their records. This is not the case with couples and families. The reason is a bit obscure but very important. Concepts of confidentiality are derived from the priest/penitent relationship. English common law developed with the notion that confidentiality, by definition, is that which takes place in

a conversation with two people. If more than two people are present, confidentiality cannot be said to exist. Unfortunately, this is still legally the case. (By the way, we are not the only ones who have this problem. I might add that group therapists are plagued with these issues as well.)

Such a situation might lead the faint of heart to not put themselves in such a position and choose to only see individuals. This is certainly a defensible choice, however, those of us who are systemically oriented see these types of treatment as highly effective and are willing to deal with the greater complexities it entails. For us, there are certain advantages that are irreplaceable.

First, The major contribution of systemically based therapies is their unique ability to address relational problems. How are we to treat relational problems by seeing individuals? While there is an argument for doing so in certain circumstances, such as spousal abuse, as a general matter I think most would agree that it is at least impractical if not wasteful to treat relational issues by individual therapy. It is certainly not indicated in order to make life easier for the psychologist's record keeping system.

Second, if we saw individuals, significant and precious information would be lost, namely, the rich interactional data that is so vital to the contextual nature of our work. Seeing people separately precludes the possibility of making these vital observations. Furthermore, I am forced to wonder about the ethical issue of deliberately refusing to obtain interactional data that is directly relevant to the presenting problem when it could have been easily obtained.

Third, some argue for seeing couples and families and keeping separate records. Doing so creates the same problem that would arise in my second point. The rich nature of the interactional data would be lost. However, this practice raises an additional problem. We know that there is an overwhelming amount of empirical data to support the idea that behavior is contextually based. One can only wonder how valid a record would

be that had individual data within it that was actually gathered in an interactional context. (I will discuss this in more detail below.)

Finally, not keeping co-mingled records raises issues regarding competence and adequate treatment. Systemically oriented psychologists keep records which include interventions, how the family responds, and plans for the future based upon the results of the intervention. Without co-mingled records, recording such information becomes impossible and leads me to wonder if such a system would fall below the standard of care.

Guidelines

So even if courageous family practitioners proceed despite the absence of statutory privilege, we are still bound by ethical codes and state regulations that require our treating the information as confidential. As result, certain procedures much be followed.

First, couples or family members must be informed at the outset regarding the psychologist's record keeping policy. They should be told that records will be co-mingled and the reason explained.

Second, they should also be informed regarding procedures for the release of information. Specifically, they need to understand that all those legally able to consent must agree to the waiver before information can be released. In the absence of consensus, the psychologist is not free to release the information.

Special Circumstances

There are numerous legal circumstances where having co-mingled records can at least be problematic.

Divorced Parents

A straight forward situation arises when a couple you have seen in the past later divorces and one of them requests their records. By now it should be obvious that the

psychologist is not free to release the information without the consent of the former spouse and should remind the former patient who requested the record. The person may remember the conversation and respond, “Well can’t you just tell my new doctor about me?”

Agreeing to do so seems appealing, but unfortunately the answer is not so simple. As I mentioned above, systemically oriented therapists know that behavior varies as a function of context. This theoretical assumption is well grounded in research largely from social psychology. It is simply not true that we are the same no matter where we are. Now, you are being asked to give the new therapist information about his or her individual patient whom you have only seen in a relational context. How do you know that his or her behavior would have been the same had you seen him or her individually? Well, you don’t. Therefore, if you choose to provide individual data, it is prudent to inform the new therapist that your data was gathered in an interactional context and that generalizing from it may not be appropriate.

Another troublesome issue arises when you have seen a family, they subsequently divorce and you receive a waiver from one of the parents to release records of their child to another therapist. This may seem a simple and straight forward situation, but all may not be as it seems. For example, not having seen the family in some time, one cannot know what has transpired. While the request may be for nothing other than obtaining further help for the child, for all you know, the parents could be in a bitter child custody battle and the records have been requested to assist one side or the other in the conflict. To make matters worse, you have no idea if the parent who requested the information has the legal right to release you. Therefore, the prudent practitioner will ask the requesting parent to have his or her attorney send you the controlling legal documents before releasing the data.

A more difficult situation arises when the psychologist receives a subpoena with a

waiver from a former patient who is now is a child custody dispute with his wife, and you have co-mingled records. A common error is to assume that the psychologist must tender the records. This is not the case. The psychologist's obligation is to respond to the subpoena, but not necessarily to provide the records unless released by all the competent parties or ordered to do so by the court. In such a case one strategy is to call the attorney and respectfully refuse to provide the requested information because you have co-mingled records and offer to release them upon receipt of a waiver from the wife. If the wife refuses to agree to the release, the father's lawyer may try to pressure you. At that juncture, you must remain firm and offer to surrender them when ordered to do so by the court. To do otherwise risks violating the wife's privilege and courts disaster.

If the attorney is undeterred, and you feel that release of the information would be harmful to one or both parties, the psychologist is always free to hire his or her own attorney to file a motion to quash the subpoena. One way or another, if a court of competent jurisdiction orders that the records be surrendered, then you do so. No harm will come to you so long as you are obeying the court since doing so takes precedence over both ethical guidelines and state board regulations.

Integrating Clinical Ethical and Legal Issues

In all of this one goal should be clear. The idea is to do what is legal, ethical and clinically indicated. I recognize that this is not always possible, but it is often an achievable goal and one that we should strive for. For example, I saw a couple over an extended period of time who had chronic conflict that never was resolved despite my best efforts. Not surprisingly they separated and quickly became involved in a custody dispute. Within weeks, I had subpoenas from both their attorneys for my records along with their waivers. I responded to the subpoenas by calling both attorneys explaining that I could not release information to them because I had co-mingled records. I assumed that would be the end of it. Much to my surprise I soon received releases from both parties to

release information to the other's lawyer. That is, John released me to give information regarding him to Susie's lawyer, and she released me to give information about her to his.

How can this be you ask? Well, systemically oriented approaches generally advise that the therapist remain neutral in order to maximize treatment effectiveness. I guess I'd done pretty well since both were confident that my records would show them in a positive light, and then of course I would have become triangulated into their conflict. In fact, nothing could have been further from the truth. He was remote, aloof, cool, rigid and had little contact with his emotional life preferring to be calm and rational. She was emotional, labile, inconsistent, and never saw a boundary she couldn't blur. In short, I really didn't think either would be a particularly good single parent. So in this case, I felt it would be harmful to the parties to release the information to anyone. As a result I called each lawyer, explained the situation, with emphasis on my feelings about their individual client. Once they heard what I had to say, and realized that I could not help, they left me alone. By proceeding in this way, I complied with the law, reduced my risk of exposure and avoided hurting my former patients who were already experiencing enough pain. But be aware. Next time I may not be so fortunate.

Finally, what if after doing my best, and jumping through all the legal hoops, I am forced to testify. In my view, therapists ought not to be involved in legal disputes due to the high probability of harming the professional relationship. Since it was my assumption that the information I divulged might be harmful, I would ask the attorney if she or he would allow me to speak with his or her client and discuss the testimony before hand. Having such a meeting would at least prepare the former patient for what I would say, give me the opportunity to explain myself and hopefully reduce distress. This is not a perfect solution, but it does go the extra mile and that is an ethically appropriate thing to do.

Conclusion

After listening to me, some of you may decide that working with couples and families, especially in the context of our litigious times is not worth it. While I would understand and respect your position, I would also feel sad that you had forgone the opportunity to work in an exciting and challenging area of our profession where you have the opportunity to do much good. Family Psychology is not for the faint of heart, but then again, neither is life. I urge you to persevere.



U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)



REPRODUCTION RELEASE

(Specific Document)

I. DOCUMENT IDENTIFICATION:

Title: <i>Procedures in Couple & Family Documentation: Legal and Risk Management Issues</i>	
Author(s): <i>Michael C Gottlieb, Ph.D., FAFP</i>	
Corporate Source: <i>N/A</i>	Publication Date: <i>Aug 98</i>

II. REPRODUCTION RELEASE:

In order to disseminate as widely as possible timely and significant materials of interest to the educational community, documents announced in the monthly abstract journal of the ERIC system, *Resources in Education (RIE)*, are usually made available to users in microfiche, reproduced paper copy, and electronic media, and sold through the ERIC Document Reproduction Service (EDRS). Credit is given to the source of each document, and, if reproduction release is granted, one of the following notices is affixed to the document.

If permission is granted to reproduce and disseminate the identified document, please CHECK ONE of the following three options and sign at the bottom of the page.

The sample sticker shown below will be affixed to all Level 1 documents

The sample sticker shown below will be affixed to all Level 2A documents

The sample sticker shown below will be affixed to all Level 2B documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

1

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE, AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2A

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2B

Level 1



Level 2A



Level 2B



Check here for Level 1 release, permitting reproduction and dissemination in microfiche or other ERIC archival media (e.g., electronic) and paper copy.

Check here for Level 2A release, permitting reproduction and dissemination in microfiche and in electronic media for ERIC archival collection subscribers only

Check here for Level 2B release, permitting reproduction and dissemination in microfiche only

Documents will be processed as indicated provided reproduction quality permits.
If permission to reproduce is granted, but no box is checked, documents will be processed at Level 1.

I hereby grant to the Educational Resources Information Center (ERIC) nonexclusive permission to reproduce and disseminate this document as indicated above. Reproduction from the ERIC microfiche or electronic media by persons other than ERIC employees and its system contractors requires permission from the copyright holder. Exception is made for non-profit reproduction by libraries and other service agencies to satisfy information needs of educators in response to discrete inquiries.

Sign here, →
please

Signature: <i>Michael C. Gottlieb, Ph.D.</i>	Printed Name/Position/Title: <i>Michael C. Gottlieb, Ph.D., FAFP</i>	
Organization/Address: <i>12810 Hillcrest Rd #224 Dallas TX 75230</i>	Telephone: <i>972-6610748</i>	FAX: <i>972 385 0093</i>
	E-Mail Address: <i>mcgottlieb@juno.com</i>	Date: <i>14 Dec 98</i>



PRIOR '98

(over)



ERIC COUNSELING AND STUDENT SERVICES CLEARINGHOUSE

201 Ferguson Building • University of North Carolina at Greensboro • PO Box 26171

Greensboro, NC 27402-6171 • 800/414.9769 • 336/334.4114 • FAX: 336/334.4116

e-mail: ericcass@uncg.edu

Greetings:

The ERIC Clearinghouse on Counseling and Student Services would like to thank you for your prior submission(s) to the ERIC database. We are very interested in any projects that you have been involved in since our last contact, and invite you to submit new works for review and possible inclusion in the ERIC database. Documents represent a significant source of educational material for the ERIC system. We don't charge a fee for adding a document to the ERIC database, and authors keep the copyrights.

As you may know, ERIC is the largest and most searched education database in the world. Documents accepted by ERIC appear in the abstract journal Resources in Education (RIE) and are announced to several thousand organizations. The inclusion of your work makes it readily available to other researchers, counselors, and educators; provides a permanent archive; and enhances the quality of RIE. Your contribution will be accessible through the printed and electronic versions of RIE, through microfiche collections that are housed at libraries around the country and the world, and through the ERIC Document Reproduction Service (EDRS). By contributing your document to the ERIC system, you participate in building an international resource for educational information. In addition, your paper may listed for publication credit on your academic vita.

To submit your document to ERIC/CASS for review and possible inclusion in the ERIC database, please send the following to the address on this letterhead:

- (1) Two (2) laser print copies of the paper,
- (2) A signed reproduction release form (see back of letter), and
- (3) A 200-word abstract (optional)

Documents are reviewed for contribution to education, timeliness, relevance, methodology, effectiveness of presentation, and reproduction quality. Previously published materials in copyrighted journals or books are not usually accepted because of Copyright Law, but authors may later publish documents which have been acquired by ERIC. Finally, please feel free to copy the reproduction release for future or additional submissions.

Sincerely,

Jillian Barr Joncas

Assistant Director for Acquisitions and Outreach



Garry R. Walz, PhD, Director

Jeanne C. Bleuer, PhD, Associate Director

